

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

RODOLFO FRANZ

v.

GUILLERMO RAMIREZ &
GUSTAVO SANCHEZ

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§

Civil Action No. _____

DEFENDANTS' NOTICE OF REMOVAL

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS:

Defendants files this notice of removal under 28 U.S.C. §1446(a) and will
respectfully show as follows:

A. INTRODUCTION

1. Plaintiff is **RODOLFO "RUDY" FRANZ**; Defendants are **GUILLERMO RAMIREZ and GUSTAVO SANCHEZ**.

2. On May 28, 2013, Plaintiff sued Defendants for intentional infliction of emotional distress, defamation, false light, and civil conspiracy. The lawsuit is styled C-3054-13-E; *Rodolfo "Rudy" Franz vs. Guillermo Ramirez and Gustavo Sanchez* and is currently pending in the 275th District Court, Hidalgo County, Texas.

3. Defendants were served with the suit. Although this case was not removable when originally filed, it became removable on July 15, 2013, when Plaintiff Franz served the Defendants with Plaintiff's First Amended Original Petition and Request for Temporary Injunction. 28 U.S.C. §1446(b)(3); *Sullivan v. Conway*, 157 F.3d

1092, 1094 (7th Cir. 1998). Plaintiff's First Amended Original Petition and Request for Temporary Injunction asserts a cause of action under 42 U.S.C. §1983. Defendants file this notice of removal within 30 days after receiving Plaintiff's First Amended Original Petition and Request for Temporary Injunction. 28 U.S.C. §1446(b)(3); *Price v. Wyeth Holdings Corp.*, 505 F.3d 624, 630-31 (7th Cir. 2007); *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694-96 (9th Cir. 2005); *Ritchie v. Williams*, 395 F.3d 283, 287 n.2 (6th Cir. 2005).

B. BASIS FOR REMOVAL

4. Removal is proper because Plaintiff's suit involves a federal question. 28 U.S.C. §§1331, 1441(a); *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005); *Broder v. Cablevision Sys. Corp.*, 418 F.3d 187, 194 (2d Cir. 2005); *Peters v. Union Pac. R.R.*, 80 F.3d 257, 260 (8th Cir. 1996). Specifically, Plaintiff asserts a claim that arises under 42 USC. §1983. Plaintiff is asserting that the Defendants denied the Plaintiff a federal right. A substantial, disputed question of federal law is a necessary element of Plaintiff's claim.

5. Joined in this action with the claim described above arising under 42 U.S.C.1983, Plaintiff has asserted claims for intentional infliction of emotional distress, defamation, false light and civil conspiracy which arise under the laws of the State of Texas. These claims fall under the supplemental jurisdiction of the district courts of the United States in that they are so related to the federal claim that they form part of the same case or controversy under Article III of the United States Constitution. 28 U.S.C. §1367(a). All of the claims arise from the alleged acts of the Defendants. Because of the relationship of these claims, this entire action falls under

the jurisdiction of the district courts of the United States.

6.. Both Defendants consent to the removal of this case to federal court and join in this motion. 28 U.S.C. §1446(b)(2)(A); *Cook v. Randolph Cnty.*, 573 F.3d 1143, 1150-51 (11th Cir. 2009); *Pritchett v. Cottrell, Inc.*, 512 F.3d 1057, 1062 (8th Cir. 2008); *Harper v. AutoAlliance Int'l, Inc.*, 392 F.3d 195, 201-02 (6th Cir. 2004).

7. Copies of all pleadings, process, orders, and other filings in the state-court suit are attached to this notice as required by 28 U.S.C. §1446(a). **Exhibits A-K.**

8. Venue is proper in the Southern District under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this district.

9. Defendants will promptly file a copy of this notice of removal with the clerk of the state court where the suit has been pending.

C. CONCLUSION

10. For the aforementioned reasons, Defendants ask the Court to remove the suit to the Federal District Court for the Southern District of Texas, McAllen Division.

Respectfully submitted,

JONES, GALLIGAN, KEY & LOZANO, L.L.P.

By: /s/ IVAN F. PÉREZ

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ATTORNEY IN CHARGE
FOR DEFENDANTS

CERTIFICATE OF NOTICE OF FILING

The undersigned, attorney of record for Defendants GUILLERMO RAMIREZ & GUSTAVO SANCHEZ, certifies that on **July 25, 2013**, a copy of the Notice of Removal of this action was filed with the District Clerk of the Hidalgo County Courthouse, and that written notice of filing of the Notice of Removal was forwarded to the party(s) listed below. Attached to the notices were copies of the Notice of Removal. Removal of this action is effective as of that date, pursuant to 28 U. S.C. §1446.

Fabian Guerrero
LAW OFFICE OF FABIAN GUERRERO
604 EAST 6TH STREET
WESLACO, TEXAS 78596

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED
7011 2000 0002 0107 1648
FACSIMILE (956) 969-9997

/s/ IVAN F. PÉREZ
IVAN F. PÉREZ